



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of  
Market Oversight

CFTC Letter No. 12-04

No-Action

July 17, 2012

Division of Market Oversight

### **Staff No-Action Relief: Temporary Relief for Non-Clearing Member Swap Dealers from the Requirements of § 20.4 of the Commission's Regulations Regarding Large Swaps Trader Reporting for Physical Commodities**

On July 22, 2011, the Commission published large trader reporting rules for physical commodity swaps and swaptions (for ease of reference, “swaps”). 76 FR 43851. The rules are codified in Part 20 of the Commission’s regulations and became effective on September 20, 2011. Section 20.3 of the reporting rules requires daily reports from clearing organizations. Section 20.4 of the reporting rules requires daily reports from clearing members and swap dealers (“reporting entities”). Section 20.7 provides that unless otherwise instructed by the Commission, a clearing organization or reporting entity shall submit data records and any other information required by the reporting rules using the format, coding structure, and electronic data transmission procedures approved in writing by the Commission. Section 20.8(a)(4) delegates to the Director of the Division of Market Oversight (“DMO” or “Division”) the authority for determining the format, coding structure, and electronic data transmission procedures for Part 20 reports.

As of July 2, 2012, clearing organizations and clearing members are required to be in full compliance with Part 20.<sup>1</sup> Swap dealers that are not clearing members (“non-clearing member swap dealers”) are required by Section 20.10(b) to comply with Part 20 upon the effective date of final regulations further defining the term swap dealer. The Commission has adopted these final regulations, and their effective date is July 23, 2012. 77 FR 30596. Market participants have raised concerns that Part 20 thus imposes reporting requirements on swap dealers before

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<sup>1</sup> On September 16, 2011, the Division issued a letter under Section 20.10(c) to relieve clearing organizations and clearing members as a class from the reporting requirements of Sections 20.3 and 20.4 until November 21, 2011 for cleared swaps, and January 20, 2012 for uncleared swaps. On November 18, 2011, the Division issued a second letter under Section 20.10(c) to establish a conditional safe harbor for less than fully compliant reporting under Sections 20.3 and 20.4 until March 20, 2012. On March 20, 2012, the Division issued conditional no-action relief for less than fully compliant reporting under Sections 20.3 and 20.4 until July 2, 2012. Both the safe harbor and no-action relief were conditioned on the submission of month-end open interest reports to the Commission, as well as the submission of an e-mail describing how the submitted reports vary from fully compliant reports, arrangements being made to reach full compliance, and the anticipated date of full compliance. On July 2, 2012, the Division issued no-action relief for less than fully compliant reporting under Section 20.4 for reports on positions based on ownership until July 27, 2012.

they are required to register as swap dealers with the National Futures Association.<sup>2</sup> They argue that modifying the Part 20 swap dealer compliance date would enable firms first to confirm their regulatory status as swap dealers before they work to comply with their regulatory obligations as swap dealers.

In light of these concerns, the Division will not recommend that the Commission commence an enforcement action against non-clearing member swap dealers for failure to submit Section 20.4 reports until 60 days after the swap dealer registration application date (“Part 20 swap dealer compliance date”). Any entity relying on this relief must state that it is doing so in an e-mail to the Division at submissions@cftc.gov and SwapsLTR@cftc.gov no later than the swap dealer registration application date.

In addition, with respect to non-clearing member swap dealers that satisfy the conditions of Section 20.10(e),<sup>3</sup> the Division will not recommend that the Commission commence an enforcement action for failure to submit Section 20.4 reports until six calendar months after the Part 20 swap dealer compliance date (“Section 20.10(e) compliance date”). Any non-clearing member swap dealer that intends to rely on this relief to extend its compliance date to the Section 20.10(e) compliance date must submit an e-mail to the Division at submissions@cftc.gov and SwapsLTR@cftc.gov, no later than the Part 20 swap dealer compliance date, certifying that it meets the conditions of Section 20.10(e), including the resource limitation or lack of reporting experience requirement, and describing with specificity the (1) resource limitations or lack of experience in reporting transactions to the Commission that cause it to be unable to submit fully compliant Section 20.4 reports by the Part 20 swap dealer compliance date, (2) arrangements that are being made for submitting fully compliant reports, and (3) anticipated date of full compliance with the requirements of Part 20 as prescribed by the Division.

The Division encourages entities that plan to register as swap dealers to submit Section 20.4 reports in advance of the Part 20 swap dealer compliance date. This would allow such entities to engage with Commission staff in correcting errors in reporting and facilitate their ability to file fully compliant reports by the Part 20 swap dealer compliance date. For the same reason, the Division encourages entities qualifying for the Section 20.10(e) compliance date to submit reports in advance of the Section 20.10(e) compliance date. Notwithstanding the Section 20.10(e) compliance date for qualifying entities, the Division does not intend to establish a safe harbor period beyond the Part 20 swap dealer compliance date for less than fully compliant reporting.

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<sup>2</sup> Pursuant to Section 3.10(a)(1)(v)(C)(2), the date by which each person who is a swap dealer must apply to be registered as a swap dealer (“swap dealer registration application date”) will be the effective date of final regulations further defining the term swap.

<sup>3</sup> Section 20.10(e) provides the Commission discretion to extend the Section 20.10(b) compliance date “by an additional six calendar months based on resource limitations or lack of experience in reporting transactions to the Commission for a swap dealer that is not an affiliate of a bank holding company and:

- (1) Is not registered with the Commission as a futures commission merchant and is not an affiliate of a futures commission merchant;
- (2) Is not registered with the Securities and Exchange Commission as a broker or dealer and is not an affiliate of a broker or dealer; and
- (3) Is not supervised by any Federal prudential regulator.”

Nothing in this letter should be interpreted as altering the implementation schedule of Part 151 of the Commission's regulations. In addition, the Division reminds the public that other applicable provisions of Part 20, including the special call provision of Section 20.5(b) and the books and records requirements of Section 20.6, became effective on September 20, 2011.

The no-action position taken herein is taken by the Division only and does not bind the Commission or any other Division or Office of the Commission's staff. As with all no-action letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, in its discretion.

If you have any questions regarding the content of this staff no-action letter, please contact Ali Hosseini at [ahosseini@cftc.gov](mailto:ahosseini@cftc.gov) or (202) 418-6144.

Sincerely,

Richard A. Shilts  
Director  
Division of Market Oversight